

FEARON, DANIEL & CO.

FEBRUARY 9, 1910.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FOSTER, of Vermont, from the Committee on Foreign Affairs, submitted the following

REPORT.

[To accompany S. J. Res. 14.]

The Committee on Foreign Affairs, to whom was referred the joint resolution (S. J. Res. 14) for the relief of the firm of Fearon, Daniel & Co., of New York and Shanghai, respectfully submits the following report thereon:

The claim of Fearon, Daniel & Co. arose out of the Boxer troubles, and was for indemnity for losses which the firm suffered as a result of the uprising in China. The full amount for which claim was filed with the United States commissioners appointed to adjudicate the claims of American citizens was \$18,965.65. This firm was at the time of its losses and is now a partnership, composed of James S. Fearon, who owns a ten-sixteenths interest; Joseph Read Patterson, and Clarence Ward Wrightson, the latter owning each a three-sixteenths interest. The firm for thirty years has been engaged in American trade in China and has always been identified there with American interests and recognized as an American firm. The senior member of the firm, Mr. Fearon, was the United States representative on the bankers' commission at Shanghai.

Joseph R. Patterson, the junior member of the firm, is a native-born American citizen, Mr. Wrightson is a British subject, and Mr. Fearon for a number of years prior to the Boxer troubles was domiciled in the city of New York, and in 1898, or two years prior to the Boxer uprising, declared his intention of becoming an American citizen, and in 1903 he became a naturalized citizen of the United States, and is now a citizen.

The United States commissioners, in adjudicating the claim of this firm, found that it had sustained damages chargeable against the Boxer indemnity in the amount of \$10,546.38, but in view of the following rule, which the commission adopted with respect to partnerships of mixed nationalities, to wit, "In partnerships of mixed nationalities,

awards have been made only for the American partner's interest in the loss sustained," an award was only made to J. R. Patterson, of his proportionate share (three-sixteenths) in the indemnity, to wit, \$1,977.44, and the award to Messrs. Fearon and Wrightson was withheld because they were not citizens of the United States at the time the damage was sustained. There was no other reason for the failure of the commission to award indemnity to these two gentlemen, who now apply to Congress for relief. The award of the commission to J. R. Patterson was approved by the Department of State and payment made to him accordingly.

In the case of Fearon, it would seem that his long residence in New York, his identification for so many years with American interests in China as a head of a firm recognized and identified as American, the fact that two years prior to the Boxer uprising he declared his intention of becoming a citizen of the United States, thus showing that the application for citizenship had no relation to the application which he now makes here for relief, and the further fact that having declared his intention of becoming a citizen of the United States he could not well apply to any other country for the relief he now seeks, present to us a strong case for the waiver of the defect of citizenship which deprives him of the right to receive indemnity which in equity and good conscience he is justly entitled to.

As to Mr. Wrightson, a somewhat different situation presents itself. He is a British subject, and his application for relief should have been addressed to the English Government, from which course he is now barred by lapse of time. Under the practice of the English commission the nationality only of a firm was regarded, and where the majority of the members and capital of a firm was British, the total claim was examined and allowed as a firm claim, regardless of the fact that some of its members may be of other nationalities. As the British Government was prepared to indemnify, and undoubtedly did indemnify American citizens connected with British firms and similarly situated with Mr. Wrightson, Mr. Wrightson, as shown by his affidavit on file with the Department of State, relied upon the English practice, and filed his claim with our commissioners as a member of an American firm and not with the English commission.

Your committee, after a full and careful consideration of all the facts in this case, have come to the conclusion that while the rule adopted by our commissioners as to partnerships of mixed nationalities above quoted is undoubtedly a wise and proper rule, and one which the committee would ordinarily follow, the facts herein presented are of such a character as to justify an exception to the rule and the waiver of the defect of citizenship in this case. There is no question in the minds of the committee but that Mr. Fearon should not be deprived of the indemnity to which he is entitled because of a mere technicality when all the essential elements entitling him to an award are present; and in view of the treatment by the English Government of our citizens similarly situated with Mr. Wrightson, it would appear to be an act of questionable propriety—and certainly lacking in comity—for us to discriminate against one of its subjects under the circumstances herein presented, and your committee is therefore of opinion that both Fearon and Wrightson should receive like treatment at our hands.

As the only bar to the payment of this claim was the defect of citizenship, and as the merits of the claim have already been adjudi-

cated by a properly constituted tribunal, whose findings have been approved by our minister to China and by the State Department, your committee has not seen fit to reopen the claim and readjudicate it, particularly as the firm takes no exception to the findings of our commissioners.

Your committee therefore recommends the passage of the Senate joint resolution without amendment.

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